

Super Carbide Tools, Inc. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW), AFL-CIO and its Local 982 and Florida Super, Inc., Party in Interest. Case 7-CA-33002

June 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

Upon a charge filed by the Union on March 5, 1992, the General Counsel of the National Labor Relations Board issued a complaint against Super Carbide Tools, Inc., the Respondent, alleging that it has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 8(d) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On May 22, 1992, the General Counsel filed a Motion for Summary Judgment. On May 27, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response.¹ The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations of the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary

¹By letter dated June 5, 1992, Attorney James W. Boyd, the Respondent's trustee in bankruptcy, advised the Board that the Respondent was involved in chapter 7 bankruptcy proceedings. The trustee's letter, however, does not constitute a proper response as there is no indication that a copy of the letter was served on all parties to the proceeding, as required by the Board's Notice to Show Cause. We note, in any event, that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. Board proceedings fall within the exception to the automatic stay provision for proceedings by a governmental unit to enforce its police or regulatory powers. See *Phoenix Co.*, 274 NLRB 995 (1985). Member Devaney agrees that the Respondent's bankruptcy proceedings do not deprive the Board of jurisdiction or serve to stay the Board's proceedings in this case, and finds it unnecessary to pass on whether the trustee's letter constitutes a response to the Board's notice to show cause.

Judgment disclose that by letter dated April 23, 1992, the Regional attorney for Region 7 notified the Respondent that unless an answer was received by May 7, 1992, a Motion for Default Judgment would be filed. To date, no answer has been filed by the Respondent.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Michigan corporation, maintains its principal place of business at First and Bridge Streets, Elk Rapids, Michigan, where it is engaged in the manufacturing and nonretail sale of carbide tipped and solid carbide cutting tools and related products. During the calendar year ending December 31, 1991, a representative period, the Respondent, in the course and conduct of its business operations, sold and shipped from its Elk Rapids, Michigan plant products valued in excess of \$50,000 directly to points located outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since about 1960, the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit and, since then, has been recognized as such by the Respondent, such recognition having been embodied in successive collective-bargaining agreements, the most recent of which was effective from June 1, 1991, to May 31, 1992. At all relevant times, the Union has been and continues to be the exclusive collective-bargaining representative of the Respondent's unit employees within the meaning of Section 9(a) of the Act. The appropriate bargaining unit consists of:

All employees employed by the Respondent at its facility located at First and Bridge Streets, Elk Rapids, Michigan; but excluding foremen, office or clerical employees and plant guards.

Since on or about September 5, 1991, and continuing to date, the Respondent has failed and refused to make the following payments to or on behalf of unit employees: vacation pay, 401(k) contributions, productivity improvement plan payments (PIP), Christmas bonus, health insurance premiums, and life insurance premiums, all of which are mandatory subjects of bargaining. By engaging in such conduct without having affording the Union notice or an opportunity to bargain

over its actions or seeking the Union's agreement, the Respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 8(d) of the Act, as alleged.

The Respondent further engaged in violations of Section 8(a)(1) when its president, Dennis Lemkau, told employees on or about October 1, 1991, that they had to get rid of the Union if the Respondent was ever to sell its plant; when Lemkau asked employees in or about early January 1992, why they had not signed the certification petition that was being circulated at the plant, and when he advised them in or about February 1992, that only a few more signatures were needed for the decertification petition; and when Respondent's plant manager, Russ Cole, threatened employees in or about February 1992 with loss of their jobs if they did not sign the decertification petition.²

CONCLUSIONS OF LAW

1. By unilaterally failing and refusing to make payments to or on behalf of unit employees with respect to vacation pay, 401(k) contributions, productivity improvement plan payments (PIP), Christmas bonus, health insurance premiums, and life insurance premiums, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 8(d), and Section 2(6) and (7) of the Act.

2. By telling employees they had to get rid of the Union if the Respondent was to sell its plant, asking employees why they had not signed a decertification petition being circulated at its plant and advising them that only a few more signatures were needed for the petition, and by threatening employees with loss of their jobs if they did not sign the decertification petition, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall be ordered to restore the status quo ante in effect prior to the unilateral changes made in the unit employees' terms and conditions of employment on or about September 5, 1991, and to make the following payments that have not been made since September 5, 1991: vacation pay, 401(k) contributions, productivity improvement plan payments (PIP), Christmas bonus, health insurance premiums, and life insur-

²Lemkau and Cole are supervisors and agents of the Respondent within the meaning of Sec. 2(11) and (13) of the Act.

ance premiums.³ We shall also order the Respondent to make unit employees whole for any expenses they may have incurred because of the Respondent's failure and refusal to make any of the above payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Super Carbide Tools, Inc., Elk Rapids, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW), AFL-CIO and its Local 982, which is the exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit, by unilaterally and without notice to or bargaining with the Union or seeking the Union's agreement, failing and refusing to make the following payments to or on behalf of unit employees: vacation pay, 401(k) contributions, productivity improvement plan payments (PIP), Christmas bonus, health insurance premiums, and life insurance premiums. The appropriate unit consists of:

All employees employed by the Respondent at its facility located at First and Bridge Streets, Elk Rapids, Michigan; but excluding foremen, office or clerical employees and plant guards.

(b) Telling employees they have to get rid of the Union if the Respondent is to sell its plant, asking employees why they have not signed a decertification petition that was circulated at its plant and advising them that only a few more signatures are needed for the petition, and threatening employees with loss of jobs if they do not sign the decertification petition.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore the status quo ante in effect prior to the unilateral changes that were made in the employees' terms and conditions of employment on September 5, 1991, and make the following payments that have not been made since September 5, 1991, to or on behalf of the unit employees: vacation pay, 401(k) contribu-

³Any additional amounts applicable to the payments to be made to the various benefit funds shall be computed in the manner prescribed in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). Interest on the other payments shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

tions, productivity improvement plan payments, Christmas bonus, health insurance premiums, and life insurance premiums, with interest as set forth in the remedy section of this decision.

(b) Make unit employees whole for any expenses they may have incurred as a result of the Respondent's failure and refusal to make any of the above payments, with interest as set forth in the remedy portion of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(d) Post at its facility in Elk Rapids, Michigan, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁴If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers Of America, (UAW), AFL-CIO and its Local 982, which is the exclusive collective-bargaining representative of our employees in an appropriate unit, by unilaterally, and without notice to or bargaining with the Union, failing and refusing to make the following payments to or on behalf of unit employees: vacation pay, 401(k) contributions, productivity improvement plan payments, Christmas bonus, health insurance premiums, and life insurance premiums. The appropriate bargaining unit consists of:

All employees employed by the Respondent at its facility located at First and Bridge Streets, Elk Rapids, Michigan; but excluding foremen, office or clerical employees and plant guards.

WE WILL NOT tell our employees that they have to get rid of the Union if we are to sell our plant, WE WILL NOT ask them why they have not signed a decertification petition that was circulated at our plant nor advise them that only a few more signatures are needed on the petition, and WE WILL NOT threaten employees with loss of jobs if they do not sign the decertification petition.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore the status quo ante that existed prior to the unilateral changes that were made in our employees' terms and conditions of employment on September 5, 1991, and WE WILL make the following payments, with interest, that have not been to or on behalf of unit employees since September 5, 1991: vacation pay, 401(k) contributions, productivity improvement plan payments, Christmas bonus[es], health insurance premiums, and life insurance premiums.

WE WILL make whole unit employees for any expenses they may have incurred as a result of our failure and refusal to make any of the above payments, with interest.

SUPER CARBIDE TOOLS, INC.